

Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

July 29, 2024

MCPB No. 24-069
Forest Conservation Plan No. F20240050
Shops at Sumner, Sumner Place Apartments
Date of Hearing: July 18, 2024

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on July 12, 2023, W.C. and A.N. Miller Development Company (“Applicant”) filed an application for approval of an amendment to a forest conservation plan on approximately 11.88 acres of land located at 4701 Sangamore Road (“Subject Property”) in the Bethesda/Chevy Chase Policy Area and 1990 *Bethesda/Chevy Chase Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s forest conservation plan application was designated Forest Conservation Plan No. F20240050, Shops at Sumner, Sumner Place Apartments (“Forest Conservation Plan,” “Amendment,” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board Staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board dated July 8, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 18, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem and Commissioners Bartley, Hedrick, and Linden voting in favor.

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Approved as to
Legal Sufficiency: /s/ Allison Myers
M-NCPPC Legal Department

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240050 on the Subject Property, subject to the following conditions, which supersede all prior conditions of approval under Final Forest Conservation Plan No. 119852020:¹

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must comply with all tree-protection and tree-save measures shown on the approved Forest Conservation Plan (“FCP”). Tree-save measures not specified on the FCP may be required by the M-NCPPC Forest Conservation Inspection Staff. Alternate methods of invasive control may be required or permitted by the M-NCPPC Forest Conservation Inspector.
3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved FCP.
4. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, the Applicant must:
 - a. Record a new Category I Conservation Easement reflecting the entire easement area excluding the area that is authorized to be removed. The new easement agreement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed before recordation of the Deed of Release of Conservation Easement for the existing conservation easement. The Book/Page for the easement must be referenced on the record plat.
 - b. Submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement recorded among the County Land Records in Book 17858, Page 208 in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release shall not be approved by M-NCPPC until the new easement is recorded and the Certificate of Compliance is recorded, or fee-in-lieu is paid.
 - c. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the Forest Conservation Plan (“FCP”), or as directed by the M-NCPPC Forest Conservation Inspection Staff.
 - d. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is

¹ For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

- required for all mitigation tree plantings, including variance tree mitigation plantings, landscape plantings credited toward meeting the requirements of the FCP, and invasive plant control measures.
- e. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the landscape plantings credited toward meeting the requirements of the FCP, variance mitigation trees, and maintenance, including invasive management controls.
 - f. Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Little Falls watershed or Priority Area to satisfy the reforestation requirement for a total of 0.48 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Little Falls watershed or Priority Area or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
5. The landscape plantings credited toward meeting the requirements of the FCP must consist of trees that are at least 3 inches in caliper size and must be native to the Piedmont Region of Maryland. There must be a minimum of 41 shade trees, 25 ornamental trees, and 48 evergreen trees. Adjustments to the landscape plantings are permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
 6. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the landscape plantings credited toward meeting the requirements of the FCP on the Subject Property as shown on the approved FCP.
 7. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings as shown on the approved FCP.
 - a. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling at least 11 caliper inches and must be native to the Piedmont Region of Maryland, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
 - b. The variance tree mitigation plantings must be at least five (5) feet away from any structures, paving, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.

8. Before certification of the FCP, the Applicant must revise the plans per the following:
 - a. Update the Invasive Species Control Plan to address long-term measures for controlling invasives within the easement areas. All proposed measures should be chosen with consideration of the proximity to the on-site stream. The use of herbicides should be avoided.
 - b. Make minor corrections/clarifications in coordination with M-NCPPC Planning staff.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

This Amendment to Final Forest Conservation Plan No. 119852020 was submitted for concurrent review and approval with Preliminary Plan Amendment No. 11985202A and Site Plan No. 820230140, which would allow construction of a new 118-unit multi-family residential building in the existing Shops at Sumner Place shopping center, including 224,274 square feet of non-residential uses to remain, and new streetscape improvements and amenity open space.

Pursuant to FFCP No. 119852020, 0.67 acres of the Property were placed into a Category I Conservation Easement. The Amendment allows for the release of 0.28 acres of the current conservation easement due to its overlap and conflict with an existing sewer easement. This means that 0.39 acres of Category I Conservation Easement will remain on the Property. Of the 0.28 acres released, no mitigation will be required for the 0.04 acres where proposed updated sewer lines will be installed. The remaining 0.24 acres of Category I Conservation Easement being released will be mitigated at a 2:1 ratio. Thus, the Applicant must mitigate for a total of 0.48 acres through either the purchase of forest mitigation bank credits or the payment of a fee-in-lieu.

This Amendment also addresses landscape plantings that were used to fulfill requirements under Final Forest Conservation Plan No. 119852020 and will be impacted by the proposed development. As conditioned, the impacted plantings

will be replaced, and the areas used to achieve landscaping credit will be restored to the appropriate standards.

B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a high priority for retention and protection (“Protected Trees”). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree’s critical root zone (“CRZ”), requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal of one Protected Tree and CRZ impacts to one other Protected Tree, as identified below:

Table 1: Removed and Impacted Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
2	Japanese Cherry	36.5	17%	Save
15	Tulip Poplar	34.6	100%	Remove

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, thereby denying the applicant reasonable and significant use of their property. In this case, denying the variance would impose an unwarranted hardship on the Applicant, preventing reasonable and significant use of the Property for the new multi-family residential building and associated amenities. The variance is required to allow for the connection of a new sewer line to the existing sewer line, supporting the proposed development on the Property. Denying the variance would lead to unwarranted hardship, as the applicant would not be able to connect to the sewer line, which would prevent development of a multi-family residential building that meets the use and developments standards of the NR zone. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a variance request.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

The impacts on the Protected Trees resulting from this redevelopment are minimal and necessary. The development cannot proceed without disturbing or removing Protected Trees, as the Property requires specific infrastructure

improvements, including upsizing and rerouting the sewer line and site access, of the location of which necessarily impacts Protected Trees. Therefore, the granting of this request is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The impact on the Protected Trees are the result of necessary improvements to the sewer line serving the Property within an existing utility easement. The Applicant determined the location of the sewer line in a way that minimizes the potential impact on protected trees. For these reasons, the Board finds that the Variance is not based on conditions that are the result of the actions of the Applicant.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variances are a result of the proposed improvements on the Property and not a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate state water quality standards or cause measurable degradation in water quality. Although the Protected Tree that is being removed is located within a stream buffer, the proposed mitigation trees will be planted within the stream valley buffer to address this impact.

As conditioned, the Applicant will be required to mitigate the removal of one 34.6 diameter-inch Protected Tree with at least 11 caliper-inches of mitigation planting. In this case, the Applicant must plant at least 4 trees of 3-inch caliper each. No mitigation is required for trees that are impacted but retained.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is

July 29, 2024

(which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Linden, seconded by Commissioner Bartley, with a vote of **3-0**; Chair Harris, and Commissioners Bartley, and Linden, voting in favor of the motion, Vice Chair Pedoeem and Commissioner Hedrick necessarily absent, at its regular meeting held on Thursday, July 25, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair
Montgomery County Planning Board